

GOP lawmakers should listen on legalizing pot

Ruben Gallego, the Democratic House assistant minority leader, would like for his Republican colleagues to listen to his pitch for marijuana to be legalized by legislative action rather than wait for a ballot initiative.

Republican lawmakers will roll their eyes. They won't listen. But they should.

In politics, some things are all but inevitable. Most political observers think civil sanction for gay marriages is one of them. I think legalization of marijuana is another.

The World War II generation is quickly being replaced by the Baby Boomers as America's retirement cohort. Baby Boomers have, shall we say, a history with the use of marijuana.

Subsequent generations are instinctively social libertarians. As the Baby Boomers continue to replace the World War II generation in the senior class, a critical mass in favor of legalizing marijuana will be reached. There will be enough Baby Boomers unwilling to see others go to jail for behavior they engaged in and didn't regard as criminal to change the equation.

This is likely to happen quickly. It certainly did in Colorado. In 2006, a marijuana legalization proposal only got 41 percent of the vote. In 2012, an arguably more liberal one passed with 55 percent of the vote.

Now, there will be those who fight against the tide of demography. The prosecutors in Arizona are particularly agitated on the subject, continuing to fight rearguard actions against the medical marijuana approved by Arizona voters.

Some of their arguments shouldn't be lightly dismissed. Marijuana is not harmless. Legalization will increase usage.

But their trump argument – the threat of incarceration helps ensure that court-ordered drug rehabilitation is completed – is disturbingly paternalistic. In a truly free society, people aren't locked up because authorities think it would be good for them.

Of course, there are utilitarian arguments in favor of making marijuana a legal, rather than a criminal, enterprise as well. Some argue in favor of waiting to see what happens in Colorado and Washington, which also recently legalized marijuana, before moving forward.

I doubt, however, that it matters. We are headed toward an electorate that will organically reject the notion of locking up young adults for getting a recreational buzz from weed rather than booze and be willing to deal with the consequences.

Now, Republican legislators are practically unanimous in continuing to support the use of criminal laws as a means of attempting to control the use of marijuana. Ordinarily, legislators shouldn't enact policies they think wrongheaded just because voters are likely to do so anyway.

But the Voter Protection Act makes this issue different. In 1998, voters approved a constitutional amendment that sharply limits what the Legislature can do with laws approved at the ballot. A voter-approved law can only be amended by a three-quarters vote of the Legislature and only "to further the purposes" of the measure.

If marijuana is to be legalized, there are a large number of difficult and complex issues to be decided. Who gets to produce legal marijuana and in what quantities? Who gets to sell it and subject to what regulations? What role do local governments get in regulating, or even prohibiting, marijuana activities in their communities?

There will need to be quite a tax and regulatory edifice constructed, which will require constant tinkering and adjustments over time. Under the Voter Protection Act, if legalization occurs through an initiative, the Legislature won't be able to make even sensible changes, at least not easily. Either the tax

and regulatory edifice will be clumsy and calcified, or excessive discretion will be give to administrative bodies.

The prospects of legislative action are even dimmer because of another constitutional amendment voters passed requiring a two-thirds vote to approve new taxes or fees. Any marijuana legalization measure will include revenue provisions to pay for at least its administrative costs and undoubtedly also to raise some dough for other state programs.

So, Gallego needs not just a few legislative Republicans to listen to him, but a whole lot of them. Perhaps they should choreograph their eye rolling.